

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL DWAIN SCOTT,)	
Plaintiff,)	
)	
vs)	Civil Action No. 06-192
)	
US AIRWAYS GROUP, INC. and)	
COMMUNICATIONS WORKERS OF)	
AMERICA, AFL-CIO,)	
Defendants.)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the above-captioned case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

II. Report

On February 14, 2006, Plaintiff, Michael Dwaine Scott, filed a complaint against Defendants, US Airways Group, Inc. and Communications Workers of America, AFL-CIO. It complains of hostile work environment and discrimination against him based on his race (African-American) and retaliation. The complaint alleges violations of the Civil Rights Act of 1866, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981.

The record shows that the complaint was never served on Defendants, and more than 120 days have passed since the filing of the complaint. In relevant part, Federal Rule of Civil Procedure 4(m) provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant...

Since Plaintiff has failed to make timely service upon Defendants and more than 120 days have passed, it is recommended that this case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

Within thirteen (13) days after being served with a copy, any party may serve and file written objections to this Report and Recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,

s/ROBERT C. MITCHELL
United States Magistrate Judge

Dated: June 28, 2006